STATE OF MICHIGAN

COURT OF APPEALS

LARRY L. AUGE, Petitioner-Appellant,	UNPUBLISHED July 26, 2011
v	No. 297241 Tax Tribunal
TOWNSHIP OF DELTA, Respondent-Appellee.	LC Nos. 00-355238; 00-355241; 00-355243; 00-355245 00-355249; 00-355255; 00-355287; 00-355292; 00-355294; 00-355297

Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Petitioner Larry Auge appeals as of right from a final judgment of the Tax Tribunal, which adopted a hearing referee's determinations of the true cash values and taxable values of Auge's properties for tax years 2008 and 2009. We affirm.

I. FACTS

Auge owns several vacant lots that are intended for development. In 2004, public-service improvements were made to the parcels, and the value of those improvements was used to increase the taxable values of the properties, as MCL 211.34d(1)(b)(*viii*) then permitted. However, in 2008, the Michigan Supreme Court held in *Toll Northville, Ltd v Northville Twp*[1] that MCL 211.34d(1)(b)(*viii*) was unconstitutional because public-service improvements do not constitute "additions" to property within the meaning of Const 1963, art 9, § 3, as amended by Proposal A. Auge thereafter challenged his tax assessments for tax years 2008 and 2009. The Tax Tribunal ruled that it did not have jurisdiction to review the 2004 taxable values and that the taxable values for 2008 and 2009 could not be changed based on the allegedly improper adjustments made in 2004. Auge now appeals.

[1] *Toll Northville, Ltd v Northville Twp*, 480 Mich 6, 8-9; 743 NW2d 902 (2008).

II. TAX TRIBUNAL DECISION

A. STANDARD OF REVIEW

> The standard of review of Tax Tribunal cases in multifaceted. If fraud is not claimed, this Court reviews the Tax Tribunal's decision for misapplication of the law or adoption of a wrong principle. We deem the Tax Tribunal's factual findings conclusive if they are supported by "competent, material, and substantial evidence on the whole record." But when statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo.[2]

B. JURISDICTION

We agree that the Tax Tribunal did not have jurisdiction to change the 2008 and 2009 taxable values where those values were initially reflected in adjustments made in 2004, and the time for filing an appeal of the 2004 taxable values had passed.[3] This Court has recently made clear that the Tax Tribunal "lacks jurisdiction to indirectly review the accuracy of a property's taxable value in a year not under appeal notwithstanding that such value is used as a starting point to calculate the property's taxable value in a year properly under appeal."[4]

Although respondent Delta Township contends that *Toll Northville* should not be applied retroactively, it is unnecessary for us to determine the retroactive effect of *Toll Northville* in this appeal. Even if we were to hold that *Toll Northville* should be given retroactive effect, given that the Tax Tribunal did not have jurisdiction to review the 2004 taxable values, *Toll Northville* cannot be used to provide relief in this appeal of the 2008 and 2009 property tax assessments based on an adjustment in the taxable values of the properties in 2004.

C. LOSS OF PROPERTY

Auge argues that the decision in *Toll Northville* resulted in the public-service improvements constituting a loss of property, which can be removed from the taxable values pursuant to MCL 211.34d(1)(h)(*i*) for tax years 2008 and 2009. Again, without deciding the retroactive effect of *Toll Northville*, we conclude that Auge has not shown that the public-service improvements were actually parts of his properties that were "removed." Auge does not cite any

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[2] *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010) (citations omitted).

[3] MCL 205.735(2); *Leahy v Orion Twp*, 269 Mich App 527, 530-531; 711 NW2d 438 (2006).

[4] *MJC/Lotus Group v Township of Brownstown*, ___Mich App ___; ___ NW2d ___ (Docket Nos. 295732, 296499 & 301043, issued May 31, 2011).

authority to support his proposition[5] that when a statute allowing certain improvements to qualify as "additions" to increase the taxable value of property is subsequently determined to be unconstitutional, those additions can be removed from taxable value as a loss pursuant to MCL 211.34d(1)(h)(*i*). Accordingly, Auge's argument—that the value attributable to the public-service improvements could be removed from the taxable values as a loss pursuant to MCL 211.34d(1)(h)(*i*)—is without merit.

D. UNIFORM TAXATION

Auge further attacks his property assessments on the ground that Delta Township failed to adhere to the principle of uniform taxation, contrary to Const 1963, art 9, § 3. Initially, we disagree with Delta Township's argument that this issue is beyond the Tax Tribunal's jurisdiction because it involves a constitutional claim. The Tax Tribunal has "exclusive and original jurisdiction" over proceedings involving "direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state."[6] As Delta Township correctly observes, the tribunal does not have jurisdiction to determine constitutional questions or to hold statutes unconstitutional.[7] But this limitation on review does not prevent the tribunal from considering claims (although couched in constitutional terms) regarding whether an assessment was arbitrary or without foundation.[8] Here, Auge's argument does not involve the validity of a statute, but rather whether Delta Township acted in accordance with the law requiring uniform taxation when assessing property. Such a claim is not beyond the Tax Tribunal's jurisdiction.[9] Nevertheless, we find no merit to Auge's argument.

Const 1963, art 9 § 3, requires "*uniform* general ad valorem taxation of real and personal property[.]" The controlling principle is that similarly situated taxpayers must be treated equally.[10] Auge argues that Delta Township violated this principle because it admitted that, after the decision in *Toll-Northville*, it no longer included public-service improvements as additions for purposes of determining taxable value, as it had done before. This alleged admission does not establish that similarly situated taxpayers were treated differently. When Auge's properties were assessed in 2004, MCL 211.34d(1)(b)(*viii*) mandated that "additions" include public-service improvements. In contrast, after *Toll Northville* was decided, Delta Township was bound

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[5] See *Davenport v Grosse Pointe Farms Bd of Zoning Appeals*, 210 Mich App 400, 405; 534 NW2d 143 (1995) (stating that this Court will not search for authority to sustain or reject a party's position).

[6] MCL 205.731(a).

[7] *Wikman v City of Novi*, 413 Mich 617, 646-647; 322 Mich 103 (1982).

[8] *Id.* at 647; *Meadowbrook Village Assoc v City of Auburn Hills*, 226 Mich App 594, 597 (1997).

[9] See *Wikman*, 413 Mich at 647.

[10] *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 640; 462 NW2d 325 (1990).

to follow that decision, which held that MCL 211.34d(1)(b)(*viii*) was unconstitutional. Thus, public-service improvements could no longer be considered "additions" for the purpose of adjusting the taxable value of property. Because the legal status of taxpayers before and after the *Toll Northville* decision was different, they were not similarly situated. Accordingly, there is no merit to this issue.

E. TRUE CASH VALUE AND TAXABLE VALUE DETERMINATIONS

Auge challenges the determinations of the true cash values and taxable values for his properties for 2008 and 2009. The burden was on Auge to establish the true cash value of his properties.[11] The Tax Tribunal adopted the true cash values and taxable values that the hearing referee determined, who in turn relied on the parties' testimony and documentary evidence that included a market analysis of the properties and an appraisal report of nearby property. Auge does not directly challenge any of this evidence, nor does he contend that the true cash values of the parcels are actually different from the assessed values. Instead, he merely again argues that it was improper for the Tax Tribunal to consider the earlier public-service improvements in determining the taxable values of his properties for 2008 and 2009.

As Auge recognizes, Proposal A limits tax increases on property as long as the same party continues to own it, even if the market value of the property increases at a greater rate, subject to permitted adjustments for "additions" without regard to this cap.[12] Auge's challenge to his property tax assessments for 2008 and 2009 is based solely on the argument that it was improper to consider the public-service improvements in 2004 as "additions" for purposes of adjusting the taxable values of his properties. As previously explained, however, MCL 211.34d(1)(b)(*viii*) permitted the adjustments to the taxable values of the properties for the public-service improvements in 2004, and Auge is not entitled to challenge those adjustments in this appeal involving tax years 2008 and 2009. Auge does not otherwise challenge the competency of the evidence on which the Tax Tribunal relied to determine the true cash values and taxable values of his properties for tax years 2008 and 2009. Accordingly, Auge has shown no error.

We affirm.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly

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[11] MCL 205.737(3).

[12] *Klooster v City of Charlevoix*, 488 Mich 289, 296-297; 795 NW2d 578 (2011); *WPW Acquisition Co v City of Troy*, 466 Mich 117, 119; 643 NW2d 564 (2002).